



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2013 REGULAR SESSION

SENATE BILL NO. 69

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ALISON FUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

1 AN ACT relating to business entities.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 11A.010 is amended to read as follows:

4 As used in this chapter, unless the context otherwise requires:

5 (1) "Business" means any corporation, limited liability company, partnership, limited{
6 liability} partnership, sole proprietorship, firm, enterprise, franchise, association,
7 organization, self-employed individual, holding company, joint stock company,
8 receivership, trust, or any legal entity through which business is conducted, whether
9 or not for profit;

10 (2) "Commission" means the Executive Branch Ethics Commission;

11 (3) "Compensation" means any money, thing of value, or economic benefit conferred
12 on, or received by, any person in return for services rendered, or to be rendered, by
13 himself or another;

14 (4) "Family" means spouse and children, as well as a person who is related to a public
15 servant as any of the following, whether by blood or adoption: parent, brother,
16 sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-
17 in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter,
18 stepbrother, stepsister, half brother, half sister;

19 (5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or
20 anything of value, unless consideration of equal or greater value is received; "gift"
21 does not include gifts from family members, campaign contributions, or door prizes
22 available to the public;

23 (6) "Income" means any money or thing of value received or to be received as a claim
24 on future services, whether in the form of a fee, salary, expense allowance,
25 forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other
26 form of compensation or any combination thereof;

27 (7) "Officer" means all major management personnel in the executive branch of state

government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, executive directors, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Kentucky Teachers' Retirement System board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Kentucky Occupational Safety and Health Review Commission, the Kentucky Board of Education, the Council on Postsecondary Education, and any person who holds a personal service contract to perform on a full-time basis for a period of time not less than six (6) months a function of any position listed in this subsection;

(8) "Official duty" means any responsibility imposed on a public servant by virtue of his position in the state service;

(9) "Public servant" means:

(a) The Governor;

(b) The Lieutenant Governor;

(c) The Secretary of State;

(d) The Attorney General;

(e) The Treasurer;

(f) The Commissioner of Agriculture;

(g) The Auditor of Public Accounts; and

(h) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;

(10) "Agency" means every state office, cabinet, department, board, commission, public corporation, or authority in the executive branch of state government. A public servant is employed by the agency by which his appointing authority is employed,

- 1 unless his agency is attached to the appointing authority's agency for administrative
2 purposes only, or unless the agency's characteristics are of a separate independent
3 nature distinct from the appointing authority and it is considered an agency on its
4 own, such as an independent department;
- 5 (11) "Lobbyist" means any person employed as a legislative agent as defined in KRS
6 6.611(22) or any person employed as an executive agency lobbyist as defined in
7 KRS 11A.201(8);
- 8 (12) "Lobbyist's principal" means the entity in whose behalf the lobbyist promotes,
9 opposes, or acts;
- 10 (13) "Candidate" means those persons who have officially filed candidacy papers or who
11 have been nominated by their political party pursuant to KRS 118.105, 118.115,
12 118.325, or 118.760 for any of the offices enumerated in subsections (9)(a) to (g) of
13 this section;
- 14 (14) "Does business with" or "doing business with" means contracting, entering into an
15 agreement, leasing, or otherwise exchanging services or goods with a state agency
16 in return for payment by the state, including accepting a grant, but not including
17 accepting a state entitlement fund disbursement;
- 18 (15) "Public agency" means any governmental entity;
- 19 (16) "Appointing authority" means the agency head or any person whom he has
20 authorized by law to act on behalf of the agency with respect to employee
21 appointments;
- 22 (17) "Represent" means to attend an agency proceeding, write a letter, or communicate
23 with an employee of an agency on behalf of someone else;
- 24 (18) "Directly involved" means to work on personally or to supervise someone who
25 works on personally; ~~{and}~~
- 26 (19) "Sporting event" means any professional or amateur sport, athletic game, contest,
27 event, or race involving machines, persons, or animals, for which admission tickets

are offered for sale and that is viewed by the public; and

(20) "Person" means an individual, proprietorship, firm, partnership, limited partnership, joint venture, joint stock company, syndicate, business or statutory trust, donative trust, estate, company, corporation, limited liability company, association, club, committee, organization, or group of persons acting in concert.

→ Section 2. KRS 11A.201 is amended to read as follows:

As used in KRS 11A.201 to 11A.246 and KRS 11A.990:

(1) "Compensation" means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another;

(2) (a) "Expenditure" means any of the following that is made to, or for the benefit of an elected executive official, the secretary of a cabinet listed in KRS 12.250, an executive agency official, or a member of the staff of any of the officials listed in this paragraph:

1. A payment, distribution, loan, advance, deposit, reimbursement, or gift of money, real estate, or anything of value, including, but not limited to, food and beverages, entertainment, lodging, transportation, or honoraria;
2. A contract, promise, or agreement to make an expenditure; or
3. The purchase, sale, or gift of services or any other thing of value.

(b) "Expenditure" does not include a contribution, gift, or grant to a foundation or other charitable organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code. "Expenditure" does not include the purchase, sale, or gift of services or any other thing of value that is available to the general public on the same terms as it is available to the persons listed in this subsection. "Expenditure" does not include a payment, contribution, gift, purchase, or any other thing of value that is made to or on behalf of any elected executive official, the secretary of a cabinet listed in

1 KRS 12.250, an executive agency official, or any member of the staff of any
 2 of the officials listed in this paragraph who works for a state agency for which
 3 the executive agency lobbyist is not registered to influence;

4 (3) "Employer" means any person who engages an executive agency lobbyist;

5 (4) "Engage" means to make any arrangement, and "engagement" means arrangement,
 6 whereby an individual is employed or retained for compensation to act for or on
 7 behalf of an employer to influence executive agency decisions or to conduct any
 8 executive agency lobbying activity;

9 (5) (a) "Financial transaction" means a transaction or activity that is conducted or
 10 undertaken for profit and arises from the joint ownership, or the ownership, or
 11 part ownership in common of any real or personal property or any commercial
 12 or business enterprise of whatever form or nature between the following:

13 1. An executive agency lobbyist, his employer, a real party in interest, or a
 14 member of the immediate family of the executive agency lobbyist, his
 15 employer, or a real party in interest; and

16 2. Any elected executive official, the secretary of a cabinet listed in KRS
 17 12.250, an executive agency official, or any member of the staff of any
 18 of the officials listed in this subparagraph.

19 (b) "Financial transaction" does not include any transaction or activity described
 20 in paragraph (a) of this subsection if it is available to the general public on the
 21 same terms;

22 (6) "Executive agency" means the office of an elected executive official, a cabinet listed
 23 in KRS 12.250, or any other state agency, department, board, or commission
 24 controlled or directed by an elected executive official or otherwise subject to his
 25 authority. "Executive agency" does not include any court or the General Assembly;

26 (7) "Executive agency decision" means a decision of an executive agency regarding the
 27 expenditure of funds of the state or of an executive agency with respect to the award

1 of a contract, grant, lease, or other financial arrangement under which those funds
2 are distributed or allocated;

3 (8) (a) "Executive agency lobbyist" means any person engaged to influence executive
4 agency decisions or to conduct executive agency lobbying activity as one (1)
5 of his main purposes on a substantial basis. The term "executive agency
6 lobbyist" shall also include placement agents and unregulated placement
7 agents.

8 (b) "Executive agency lobbyist" does not include an elected or appointed officer
9 or employee of a federal or state agency, state college, state university, or
10 political subdivision who attempts to influence or affect executive agency
11 decisions in his fiduciary capacity as a representative of his agency, college,
12 university, or political subdivision;

13 (9) (a) "Executive agency lobbying activity" means contacts made to promote,
14 oppose, or otherwise influence the outcome of an executive agency decision
15 by direct communication with an elected executive official, the secretary of
16 any cabinet listed in KRS 12.250, any executive agency official, or a member
17 of the staff of any one of the officials listed in this paragraph.

18 (b) "Executive agency lobbying activity" does not include any of the following:

- 19 1. The action of any person having a direct interest in executive agency
20 decisions, if the person acting under Section 1 of the Kentucky
21 Constitution, assembles together with other persons for their common
22 good, petitions any person listed in paragraph (a) of this subsection for
23 the redress of grievances or other proper purposes;
- 24 2. Contacts made for the sole purpose of gathering information contained
25 in a public record; or
- 26 3. Appearances before public meetings of executive agencies;

27 (10) "Executive agency official" means an officer or employee of an executive agency

- 1 whose principal duties are to formulate policy or to participate directly or indirectly
 2 in the preparation, review, or award of contracts, grants, leases, or other financial
 3 arrangements with an executive agency;
- 4 (11) "Aggrieved party" means a party entitled to resort to a remedy;
- 5 (12) "Elected executive official" means the Governor, Lieutenant Governor, Secretary of
 6 State, Auditor of Public Accounts, State Treasurer, Attorney General, and
 7 Commissioner of Agriculture;
- 8 (13) "Person" means an individual, proprietorship, firm, partnership, limited~~[- liability]~~
 9 partnership, joint venture, joint stock company, syndicate, business or statutory
 10 trust, donative trust, estate, company, corporation, limited liability
 11 company~~[corporation]~~, association, club, committee, organization, or group of
 12 persons acting in concert;
- 13 (14) "Staff" means any employee of the office of the Governor, or a cabinet listed in
 14 KRS 12.250, whose official duties are to formulate policy and who exercises
 15 administrative or supervisory authority, or who authorizes the expenditure of state
 16 funds;
- 17 (15) "Real party in interest" means the person or entity on whose behalf an executive
 18 agency lobbyist is acting, if that person or entity is not the employer of the executive
 19 agency lobbyist;
- 20 (16) "Substantial basis" means contacts which are intended to influence a decision that
 21 involves one or more disbursements of state funds in an amount of at least five
 22 thousand dollars (\$5,000) per year;
- 23 (17) "Placement agent" means an individual or firm who is compensated or hired by an
 24 employer or other real party in interest for the purpose of influencing an executive
 25 agency decision regarding the investment of the Kentucky Retirement Systems or
 26 the Kentucky Teachers' Retirement System assets; and
- 27 (18) "Unregulated placement agent" means a placement agent who is prohibited by

1 federal securities laws and regulations promulgated thereunder from receiving
2 compensation for soliciting a government agency.

3 ➔Section 3. KRS 14A.3-010 is amended to read as follows:

4 (1) Except as authorized by subsection (23) of this section, the real name of an entity or
5 foreign entity shall be distinguishable from any name of record with the Secretary of
6 State.

7 (2) The real name of a corporation or nonprofit corporation shall:

8 (a) 1. End with~~Contain~~ the word "corporation," "company," or "limited" or
9 the abbreviation "Corp.," "Inc.," "Co.," or "Ltd." or words or
10 abbreviations of like import in another language, provided, however,
11 that if a nonprofit corporation's name includes the word "company" or
12 the abbreviation "Co.," it may not be immediately preceded by the word
13 "and" or the abbreviation "&"; or

14 2. If a professional service corporation, shall end with~~contain~~ the words
15 "professional service corporation" or the abbreviation "P.S.C."; and

16 (b) Shall not contain language stating or implying that the corporation is
17 organized for a purpose other than that permitted by its organic act and its
18 articles of incorporation.

19 (3) The real name of a limited liability company shall end with~~contain~~ the phrase
20 "limited liability company" or "limited company" or the abbreviation "LLC" or
21 "LC," provided, however, if the company is a professional limited liability company
22 the name shall end with~~contain~~ the phrase "professional limited liability
23 company" or "professional limited company" or the abbreviation "PLLC" or "PLC."
24 In the name of either a limited liability company or a professional limited liability
25 company, the word "limited" may be abbreviated as "Ltd." and the word "Company"
26 may be abbreviated as "Co."

27 (4) The real name of a limited liability partnership registered pursuant to KRS 362.555

- 1 shall contain the phrase "Registered Limited Liability Partnership" or the
2 abbreviation "LLP" as the last words or letters of its name.
- 3 (5) The real name of a partnership subject to KRS 362.1-101 to 362.1-1205, the
4 "Kentucky Revised Uniform Partnership Act (2006)":
- 5 (a) Shall not contain the word "corporation" or "incorporated" or the abbreviation
6 "Corp." or "Inc."; and
- 7 (b) May contain the word "limited" or the abbreviation "Ltd." only if the
8 partnership has filed a statement of qualification.
- 9 (6) The real name of a limited liability partnership that has filed a statement of
10 qualification pursuant to KRS 362.1-1001 shall end with the phrase "Registered
11 Limited Liability Partnership" or "Limited Liability Partnership" or the abbreviation
12 "R.L.L.P.," "L.L.P.," "RLLP," or "LLP."
- 13 (7) The real name of a limited partnership subject to KRS 362.401 to 362.525, the
14 "Kentucky Revised Uniform Limited Partnership Act," shall:
- 15 (a) Contain the word "Limited" or the abbreviation "Ltd." unless the limited
16 partnership was formed under any statute of the Commonwealth prior to the
17 adoption of the Kentucky Revised Uniform Limited Partnership Act; and
- 18 (b) Not contain the name of a limited partner unless:
- 19 1. That name is also the name of a general partner; or
- 20 2. The business of the limited partnership had been carried on under that
21 name before the admission of that limited partner.
- 22 (8) The real name of a limited partnership subject to KRS 362.2-102 to 362.2-1207, the
23 "Kentucky Uniform Limited Partnership Act (2006)," that is not a limited liability
24 limited partnership may contain the name of any partner and shall:
- 25 (a) End with~~Contain~~ the phrase "limited partnership" or "limited" or the
26 abbreviation "L.P.," "LP," or "Ltd."; and
- 27 (b) Not contain the phrase "limited liability limited partnership" or the

1 abbreviation "L.L.L.P." or "LLLP."

2 (9) The real name of a limited partnership subject to KRS 362.2-102 to 362.2-1207, the
3 "Kentucky Uniform Limited Partnership Act (2006)," that is a limited liability
4 limited partnership may contain the name of any partner and shall:

5 (a) End with~~Contain~~ the phrase "limited liability limited partnership" or the
6 abbreviation "L.L.L.P." or "LLLP"; and

7 (b) Not contain only the phrase "limited partnership" or the abbreviation "L.P." or
8 "LP."

9 (10) Subject to KRS 362.2-1204, subsections (8) and (9) of this section shall not apply to
10 a limited partnership formed under any statute of this Commonwealth prior to July
11 15, 1988.

12 (11) The real name of a rural telephone cooperative corporation:

13 (a) Shall contain the word "Telephone," "Telecommunications," "Company," or
14 "Corporation" and the abbreviation "Inc.," unless in an affidavit made by its
15 president or vice president, and filed with the Secretary of State, or in an
16 affidavit made by a person signing articles of incorporation, consolidation,
17 merger, or conversion which relate to that cooperative, and filed, together with
18 any such articles, with the Secretary of State, it shall appear that the
19 cooperative desires to do business in another state and is or would be
20 precluded there from by reason of the inclusion of such words or either thereof
21 in its name; and

22 (b) May include the word "Cooperative."

23 (12) The phrase "Rural Electric Cooperative" may not be used in the name of any entity
24 or foreign entity except for one formed under KRS Chapter 279.

25 (13) Except as otherwise provided in this section, the word "cooperative" may not be
26 used in the name of any entity doing business~~for profit~~ in this Commonwealth.

27 (14) The name of a limited cooperative association shall end with~~contain~~ the words

1 "limited cooperative association" or "limited cooperative" or the abbreviation
2 "L.C.A." or "LCA." "Limited" may be abbreviated as "Ltd.," "Cooperative" may be
3 abbreviated as "Co-op" or "Coop," and "Association" may be abbreviated as
4 "Assoc." or "Assn."

5 (15) There are no required identifiers for a business trust or a statutory trust, but the
6 name of a business or statutory trust may include "Limited" or "Ltd." and may not
7 include any of "incorporated," "corporation," "Inc.," "Corp.," "partnership," or
8 "cooperative."

9 (16) This chapter does not control the use of assumed names.

10 (17) The filing of articles of incorporation, articles of organization, articles of
11 association, a statement of qualification, a certificate of limited partnership, a
12 declaration or certificate of trust, an application to transact authority in the
13 Commonwealth, a statement of foreign qualification, a name registration, or name
14 reservation under the particular name shall not automatically prevent the use of that
15 name or protect that name from use by other persons.

16 (18) The provisions of subsection (2)(a) of this section shall not affect the right of any
17 nonprofit corporation existing on June 13, 1968, to continue the use of its name as
18 then in effect.

19 (19) The assumption of a nonprofit corporate name in violation of this section shall not
20 affect or vitiate the corporate existence, but the courts of this Commonwealth
21 having equity jurisdiction may, upon the application of the Commonwealth or of
22 any person interested or affected, enjoin such corporation from doing business
23 under a name assumed in violation of this section, although a certificate of
24 incorporation may have been issued.

25 (20) This section shall not apply to any domestic or foreign telephone cooperative which
26 became subject to KRS 279.310 to 279.600 by complying with the provisions of
27 KRS 279.470 or which does business in this Commonwealth pursuant to KRS

1 279.570 and which elects to retain a name which does not comply with this section.

2 (21) Nothing in this section shall limit the ability of a professional regulatory board to
3 promulgate rules governing entities and foreign entities under its jurisdiction.

4 (22) The real name of a foreign entity will be determined according to KRS 365.015. For
5 entities not covered by that statute, the real name of the foreign entity will be the
6 real name of the entity as so recognized in the jurisdiction of its origination.

7 (23) The real name of a partnership, other than that of a limited liability partnership as
8 set forth on a statement of qualification or a registration as a limited liability
9 partnership filed pursuant to KRS 362.555 or that of a foreign limited liability
10 partnership as set forth on a statement of foreign qualification, need not be
11 distinguishable from any name of record with the Secretary of State.

12 ➔Section 4. KRS 14A.9-050 is amended to read as follows:

13 (1) A certificate of authority shall authorize the foreign entity to which it is issued the
14 authority to transact business in this Commonwealth subject, however, to the right
15 of the Commonwealth to revoke the certificate as provided in this chapter.

16 (2) A foreign entity with a valid certificate of authority shall have the same but no
17 greater rights and shall have the same but no greater privileges as, and except as
18 otherwise provided by this chapter shall be subject to the same duties, restrictions,
19 penalties, and liabilities now or later imposed on, a domestic entity of like character.

20 (3) This chapter shall not authorize this Commonwealth to regulate the organization or
21 internal affairs, including the inspection of books, records, and documents, of a
22 foreign entity transacting~~[authorized to transact]~~ business in this Commonwealth.

23 (4) Nothing in this section shall be interpreted or construed to limit the capacity and
24 authority of a professional regulatory board to regulate the terms and manner by
25 which professional services are rendered in the Commonwealth of Kentucky
26 through or on behalf of a foreign entity.

27 ➔Section 5. KRS 271B.1-410 is amended to read as follows:

- 1 (1) Notice under this chapter shall be in writing unless oral notice is reasonable under
2 the circumstances. Notice by electronic transmission is written notice.
- 3 (2) Notice may be communicated in person; by mail or other method of delivery; or by
4 telephone, voice mail, or other electronic means. If these forms of personal notice
5 are impracticable, notice may be communicated by a newspaper of general
6 circulation in the area where published; or by radio, television, or other form of
7 public broadcast communication.
- 8 (3) Written notice by a domestic or foreign corporation to its shareholder, if in a
9 comprehensible form, shall be effective:
 - 10 (a) Upon deposit in the United States mail, if mailed postpaid and correctly
11 addressed to the shareholder's address shown in the corporation's current
12 record of shareholders; or
 - 13 (b) When electronically transmitted to the shareholder in a manner authorized and
14 in accordance with the shareholder's instructions, if any.
- 15 (4) Written notice to a domestic or foreign corporation authorized to transact business
16 in this state may be addressed to its registered agent at its registered office or to the
17 corporation or its secretary at its principal office address as of record with the
18 Secretary of State~~[shown in its most recent annual report or, in the case of a~~
19 ~~domestic corporation that has not yet delivered an annual report, in its articles of~~
20 ~~incorporation or, in the case of a foreign corporation that has not yet delivered an~~
21 ~~annual report, in its application for a certificate of authority].~~
- 22 (5) Except as provided in subsections (3) and (4) of this section, written notice, if in a
23 comprehensible form, shall be effective at the earliest of the following:
 - 24 (a) When received;
 - 25 (b) Five (5) days after its deposit in the United States mail, if mailed postpaid and
26 correctly addressed; or
 - 27 (c) On the date shown on the return receipt, if sent by registered or certified mail,

1 return receipt requested, and the receipt is signed by or on behalf of the
2 addressee.

3 (6) Oral notice shall be effective when communicated, if communicated in a
4 comprehensible manner.

5 (7) If this chapter prescribes notice requirements for particular circumstances, those
6 requirements, shall govern. If articles of incorporation or bylaws prescribe notice
7 requirements not inconsistent with this section or other provisions of this chapter,
8 those requirements shall govern.

9 ➔Section 6. KRS 275.175 is amended to read as follows:

10 (1) Unless otherwise provided in the articles of organization, a written operating
11 agreement, or this chapter, the affirmative vote, approval, or consent of a majority-
12 in-interest of the members, if management of the limited liability company is vested
13 in the members, or a simple majority of the managers, each having a single vote, if
14 the management of the limited liability company is vested in managers, shall be
15 required to decide any matter connected with the business affairs of the limited
16 liability company.

17 (2) Unless otherwise provided in a written operating agreement, the affirmative vote,
18 approval, or consent of the majority-in-interest of the members shall be required to:

19 (a) Amend a written operating agreement;

20 (b) Authorize a manager or member to do any act on behalf of the limited liability
21 company that contravenes a written operating agreement, including any
22 written provision thereof which expressly limits the purpose, business, or
23 affairs of the limited liability company or the conduct thereof; or

24 (c) Amend the articles of organization~~[to change the management of the limited~~
25 ~~liability company from members to managers or from managers to members]~~.

26 (3) Unless otherwise provided in the articles of organization, a written operating
27 agreement, or this chapter, for all purposes of this chapter, the members of a limited

1 liability company shall vote, approve, or consent in proportion to their
 2 contributions, based upon the agreed value as stated in the records of the limited
 3 liability company as required by KRS 275.185, made by each member to the extent
 4 they have been received by the limited liability company and have not been
 5 returned.

- 6 (4) Unless otherwise provided in the articles of organization or the written operating
 7 agreement, no member of a limited liability company shall have the right to dissent
 8 from an amendment to the operating agreement or the articles of organization.

9 ➔Section 7. KRS 275.185 is amended to read as follows:

- 10 (1) A limited liability company shall keep at its principal office or other location as set
 11 forth in a written operating agreement, the following:

12 (a) A current list, and all past lists, setting forth the full name and last known
 13 mailing address of each member and, if any, each manager;

14 (b) A copy of the articles of organization and all amendments thereto, together
 15 with executed copies of any power of attorney pursuant to which any articles
 16 of amendment have been executed;

17 (c) Copies of the limited liability company's federal, state, and local income tax
 18 returns and financial statements, if any, for the three (3) most recent years or,
 19 if those returns and statements were not prepared, copies of the information
 20 and statements provided to, or which should have been provided to, the
 21 members to enable them to prepare their federal, state, and local tax returns
 22 for those years;

23 (d) Copies of any effective written operating agreements and all amendments
 24 thereto, and copies of any written operating agreements no longer in effect;
 25 and

26 (e) Unless contained in writing in an operating agreement:

27 1. A writing setting forth the amount of cash, if any, and a statement of the

1 agreed value of other property or services, if any, contributed by each
2 member and the times at which or events upon the happening of which
3 any additional contributions are to be made;

4 2. A writing stating events, if any, upon the happening of which the limited
5 liability company is to be dissolved and its affairs wound up; and

6 3. Other writings, if any, prepared pursuant to a requirement, if any, in an
7 operating agreement.

8 (2) Subject to subsection (5) of this section, upon reasonable written request to the
9 limited liability company, a member may, at the member's own expense, inspect
10 and copy during ordinary business hours any limited liability company record,
11 where the record is located or at a reasonable location.

12 (3) Members, if the management of the limited liability company is vested in the
13 members, or managers, if management of the limited liability company is vested in
14 managers, shall render, to the extent the circumstances render it just and reasonable,
15 true and full information of all matters affecting the members to any member, and
16 the member's agent, and to the legal representative of any deceased member or of
17 any member under legal disability.

18 (4) Failure of the limited liability company to keep or maintain any of the records or
19 information required pursuant to this section shall not be grounds for imposing
20 liability on any member or manager for the debts and obligations of the limited
21 liability company.

22 (5) A written operating agreement may impose reasonable limitations upon the
23 inspection and use of any record of or information with respect to a limited liability
24 company. Except as to limitations set forth in a written operating agreement to
25 which a member requesting information has assented, the limited liability company
26 bears the burden of proof in demonstrating the reasonableness of any restrictions
27 imposed.

➔Section 8. KRS 281.6251 is amended to read as follows:

(1) Notwithstanding the provisions of KRS 13B.050, any person, partnership, limited partnership, corporation, limited liability company[~~corporation~~], or any other entity applying for a certificate in accordance with KRS 281.625 shall advertise his or her intention to apply for a certificate by using one (1) of the following methods:

(a) Publication of a public notice under KRS 424.130(1)(b). The applicant shall cause the notice to be published once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the proposed territory, the first publication to be made within seven (7) days of the filing of the application with the cabinet; or

(b) Correspondence by electronic mail with every existing certificate holder affected by the application giving notice of the intention to apply for a certificate.

(2) The notice required under this section shall conform in all material respects to the following requirements:

(a) The notice shall state:

1. The name and address of the applicant if the applicant is an individual;
2. The name and address of each partner and the name and address of the business if the applicant is a partnership or limited partnership;
3. The name and address of each principal officer and director and the name and business address of the corporation if the applicant is a corporation; or
4. The name and address of each member and each manager if the applicant is a limited liability company[~~corporation~~];

(b) The notice shall specifically describe the proposed route or territory for which the certificate is sought and the type of certificate being requested; and

(c) The notice shall state the date the application will be filed and shall contain

the following statement: "Any person~~[- association, corporation, or LLC]~~ who has an interest in the granting of a certificate in the territory sought to be served may protest the granting of the certificate by writing the Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, within thirty (30) days of the date of legal publication."

→Section.9 KRS 386A.3-050 is amended to read as follows:

- (1) A statutory trust has perpetual existence.
- (2) A statutory trust, or any series thereof, may not be terminated or revoked except in accordance with this chapter or the terms of the governing instrument.
- (3) A statutory trust does not terminate because the same person is the sole trustee and sole beneficial owner.
- (4) A series of a statutory trust does not terminate because the same person is the sole trustee and the sole beneficial owner associated with the series.
- (5) That the same person is the sole trustee and sole beneficial owner of a statutory trust or of a series thereof is not a basis for not applying KRS 386A.3-040(3) or (4).
- (6) The death, incapacity, dissolution, termination, or bankruptcy of a beneficial owner or of a trustee does not result in the termination or dissolution of the statutory trust or any series with which the beneficial owner or trustee has been associated.

→Section 10. KRS 386A.6-030 is amended to read as follows:

- ~~(1) [Any distribution by a statutory trust before dissolution shall be made in proportion to the beneficial interests.~~
- ~~(2)]~~A contribution of a beneficial owner to a statutory trust may be in cash, property, or services rendered or a promissory note or other obligation to contribute cash or property or to perform services. A person may become a beneficial owner of a statutory trust and may receive a beneficial interest in a statutory trust without making or being obligated to make a contribution to the trust.

1 ~~(2)~~~~(3)~~ An obligation of a beneficial owner to make a contribution, whether of cash,
 2 property, or services, to the statutory trust shall not be enforceable unless set forth in
 3 a writing signed by the beneficial owner.

4 ~~(3)~~~~(4)~~ Unless otherwise provided in a governing instrument, a beneficial owner shall
 5 be obligated to the statutory trust to perform any enforceable promise to contribute
 6 cash or property or to perform services, even if the beneficial owner is unable to
 7 perform because of death, disability, or other reason. If a beneficial owner does not
 8 make a required contribution of property or services, then the beneficial owner shall
 9 be obligated, at the option of the statutory trust, to contribute cash equal to that
 10 portion of value of the stated contribution that has not been made. This obligation is
 11 in addition to any other right, including the right to specific performance, that the
 12 trust has against the beneficial owner under the governing instrument or applicable
 13 law.

14 ~~(4)~~~~(5)~~ Unless otherwise provided in a governing instrument, an obligation of a
 15 beneficial owner to make a contribution may be compromised by the beneficial
 16 owners. Notwithstanding any compromise, a creditor of a statutory trust who
 17 extended credit or otherwise acted in reliance on an obligation after the beneficial
 18 owner executed a writing which reflects that obligation and before any such
 19 compromise is reached may enforce the original obligation.

20 ➔Section 11. KRS 386A.6-040 is amended to read as follows:

21 (1) *Any distribution by a statutory trust before dissolution shall be made in*
 22 *proportion to the beneficial interests.*

23 (2) When a beneficial owner becomes entitled to receive a distribution, the trust's
 24 indebtedness to a beneficial owner shall be at parity with the trust's indebtedness to
 25 its general creditors except to the extent subordinated by agreement.

26 ~~(3)~~~~(2)~~ When a beneficial owner associated with a series becomes entitled to a
 27 distribution, the series's indebtedness to a beneficial owner shall be at parity with

the series's indebtedness to its general creditors except as subordinated by agreement.

~~(4)~~~~(3)~~ Unless otherwise provided in a governing instrument:

(a) A beneficial owner, regardless of the nature of the beneficial owner's contribution, shall not have a right to demand and receive a distribution in any form other than cash; and

(b) A beneficial owner shall not be compelled to accept a distribution of any asset in kind to the extent that the percentage of the asset distributed to the beneficial owner exceeds the percentage that the beneficial owner would have shared in cash distribution equal to the value of the property at the time of distribution.

→Section 12. KRS 433.900 is amended to read as follows:

As used in KRS 433.900 to 433.906, unless the context otherwise requires:

(1) "Applicant" means a secondary metals recycler seeking an application for a certificate of registration with the Office of Occupations and Professions of the Public Protection Cabinet, as provided in KRS 433.902. If the secondary metals recycler is owned by a corporation, limited liability company~~corporation~~, partnership, limited~~liability~~ partnership, incorporated association, or any other entity organized for the purpose of engaging in business as a secondary metals recycler, "applicant" means the officers of these entities;

(2) "Ferrous metals" means any metal containing significant quantities of iron or steel;

(3) "Nonferrous metals" means metal not containing significant quantities of iron, including but not limited to copper, brass, aluminum, bronze, lead, zinc, nickel, and alloys thereof;

(4) "Name-based background check" means a statewide search of the centralized criminal history record information system by the Department of Kentucky State Police, utilizing the name, date of birth, and Social Security number of the

1 applicant;

2 (5) "Restricted metals" means any of the following metal items:

3 (a) Manhole covers;

4 (b) Electric light poles or other utility poles;

5 (c) Guardrails;

6 (d) Street signs, traffic signs, or traffic signals;

7 (e) Whole road tiles;

8 (f) Funeral markers or funeral vases;

9 (g) Railroad equipment, including but not limited to a tie plate, signal house,
10 control box, switch plate, e-clip, or rail tie junction;

11 (h) Condensing or evaporating coils made from copper, aluminum, or aluminum-
12 copper, including the tubing or rods from a heating or air conditioning unit
13 that is not from a window air conditioning unit or automobile air conditioning
14 unit;

15 (i) Stainless steel beer kegs;

16 (j) A catalytic converter or any nonferrous part of a catalytic converter unless
17 purchased as part of a vehicle; or

18 (k) Storm drain covers; and

19 (6) (a) "Secondary metals recycler" means:

20 1. Any person who is engaged in the business of gathering or obtaining
21 ferrous or nonferrous metals that have served their original economic
22 purpose or is in the business of performing the manufacturing process by
23 which ferrous metals or nonferrous metals are converted into raw
24 material products consisting of prepared grades and having an existing
25 or potential monetary value;

26 2. Any person who has facilities for performing the manufacturing process
27 by which ferrous metals or nonferrous metals are converted into raw

1 material products consisting of prepared grades and having an existing
 2 or potential monetary value, other than by the exclusive use of hand
 3 tools, by methods including but not limited to processing, sorting,
 4 cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or
 5 changing the physical form or chemical content thereof; or

- 6 3. Any recycler, dealer in junk or metals, dealer in secondhand articles,
 7 vendor of bottles or rags, or collector of or dealer in articles found in
 8 ashes, garbage, or other refuse, whether a dealer, collector, or vendor
 9 operates an established place of business or an itinerant business.

- 10 (b) "Secondary metals recycler" shall not include a municipal solid waste
 11 department or any entity which has been issued a municipal solid waste
 12 transporter license by the Kentucky Transportation Cabinet and which gathers
 13 or obtains ferrous or nonferrous metals in a vehicle registered in Kentucky to
 14 transport solid waste.

15 ➔ Section 13. KRS 433.902 is amended to read as follows:

- 16 (1) (a) Each secondary metals recycler shall submit to a name-based background
 17 check as provided in subsection (2) of this section and obtain a certificate of
 18 registration from the Office of Occupations and Professions of the Public
 19 Protection Cabinet within sixty (60) days of the effective date of
 20 administrative regulations promulgated pursuant to this section.
- 21 (b) The application for certificate of registration shall be in a form and format
 22 determined by the Office of Occupations and Professions of the Public
 23 Protection Cabinet and shall contain at a minimum the following:
- 24 1. The name of the secondary metals recycling business;
 - 25 2. The name or names of each applicant;
 - 26 3. The address of each secondary metals recycling business owned by the
 27 applicant; and

- 1 4. Contact information for the purposes of KRS 433.906.
- 2 (c) Any person listed on an application for a certificate of registration shall be at
3 least eighteen (18) years of age prior to the date that the application is
4 submitted.
- 5 (d) Any corporation, limited liability company [~~corporation~~], partnership, limited
6 [~~liability~~] partnership, incorporated association, or any other entity engaged in
7 business as, or organized for the purpose of engaging in business as, a
8 secondary metals recycler submitting an application must be organized and
9 qualified to do business in the Commonwealth.
- 10 (e) The Office of Occupations and Professions of the Public Protection Cabinet
11 shall charge each applicant a reasonable fee established by administrative
12 regulation equal to the actual administrative costs of processing an application
13 for a certificate of registration.
- 14 (f) If an applicant is the owner of more than one (1) secondary metals recycling
15 location, the Office of Occupations and Professions of the Public Protection
16 Cabinet shall charge a fee for each location that is no greater than the actual
17 administrative costs of processing the application for certificate of
18 registration. Upon approval of the application, the Office of Occupations and
19 Professions of the Public Protection Cabinet shall issue a certificate of
20 registration for each location.
- 21 (g) Each applicant that receives a certificate of registration from the Office of
22 Occupations and Professions of the Public Protection Cabinet as provided in
23 this section shall be required to pay an annual renewal fee equal to the actual
24 administrative costs of processing the renewal of the certificate for
25 registration.
- 26 (h) The list of secondary metals recyclers registered with the Office of
27 Occupations and Professions of the Public Protection Cabinet as provided in

1 this section shall be public information and available upon written request to
2 the Office of Occupations and Professions of the Public Protection Cabinet.

3 (2) (a) Prior to approval of the application, the Office of Occupations and Professions
4 of the Public Protection Cabinet shall require a name-based background check
5 on each applicant.

6 (b) Each applicant shall provide written authorization to the Department of
7 Kentucky State Police to perform a name-based background check and release
8 the results to the Office of Occupations and Professions of the Public
9 Protection Cabinet.

10 (c) Any request for a name-based background check shall be on a form or through
11 a process approved by the Department of Kentucky State Police, which may
12 charge a fee to be paid by the applicant in an amount no greater than the actual
13 cost of processing the request.

14 (d) The Office of Occupations and Professions of the Public Protection Cabinet
15 shall not issue a certificate of registration to an applicant if the name-based
16 background check results reveal that the applicant has been convicted of, or
17 entered a plea of guilty, an Alford plea, or a plea of nolo contendere to, a
18 felony involving theft, larceny, dealing in stolen property, receiving stolen
19 property, burglary, embezzlement, or obtaining property by false pretenses,
20 any felony drug offense, or knowingly and intentionally violating the laws of
21 the Commonwealth relating to registration as a secondary metals recycler.

22 (3) A secondary metals recycler's certificate of registration shall be conspicuously
23 displayed at the location of the secondary metals recycler listed on the application
24 for certificate of registration or at each location if the secondary metals recycler
25 owns more than one (1) business location.

26 (4) The Office of Occupations and Professions of the Public Protection Cabinet shall
27 promulgate administrative regulations in accordance with KRS Chapter 13A to

1 implement the provisions of this section.

- 2 (5) The Office of Occupations and Professions of the Public Protection Cabinet shall
3 not be responsible for any disciplinary action against any secondary metals recycler
4 seeking an application for certificate of registration.

5 ➔SECTION 14. A NEW SECTION OF SUBTITLE 11 OF KRS CHAPTER 286
6 IS CREATED TO READ AS FOLLOWS:

7 (1) As used in this section, "Registry" means the State Regulatory Registry, LLC, or
8 its successor organization.

9 (2) When an application, report, or approval request is required by this subtitle to be
10 filed with the commissioner, the commissioner may by rule or order require the
11 filing of the application, report, or approval request, including the applicable
12 fees, be submitted to:

13 (a) The State Regulatory Registry, LLC, or its successor organization;

14 (b) The Registry's parent, affiliate, or operating subsidiary; or

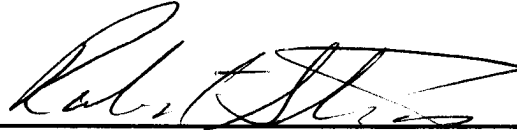
15 (c) Other agencies or authorities, as part of a nationwide licensing system;
16 which may act as an agent for receiving, requesting, and distributing
17 information to and from any source directed by the commissioner.

18 (3) (a) The commissioner is authorized to establish relationships or contracts with
19 other governmental agencies, the Registry, or entities affiliated with the
20 Registry that he or she deems necessary to carry out the purpose of this
21 section.

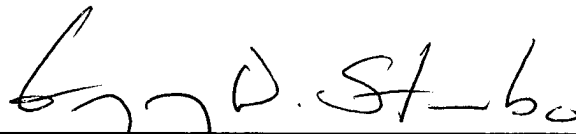
22 (b) The commissioner may report violations of this subtitle, enforcement
23 actions, and other relevant information to governmental agencies, the
24 Registry, or affiliated entities with which the commissioner has established
25 a relationship or contract, notwithstanding any provision to the contrary in
26 this subtitle.

27 (4) For purposes of this section and to reduce the points of contact which the Federal

1 *Bureau of Investigation may have to maintain for purposes of this subtitle, the*
2 *commissioner may use other governmental agencies, the Registry, or entities*
3 *affiliated with the Registry, as an agent for requesting information from and*
4 *distributing information to the United States Department of Justice or other*
5 *governmental agencies.*



President of Senate



Speaker-House of Representatives

Attest:



Chief Clerk of Senate

Approved



Governor

Date

3-22-13